

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, FEBRUARY 13, 1997

Chairman Heavey said the meeting is starting late because there must be three commissioners present to constitute a quorum. Commissioners Garrison and Casey are not present because their appointments have been withdrawn by Governor Locke. He said he would begin the meeting when Commissioner McLaughlin arrives. He called the meeting to order at 1:55 p.m. at the Ramada Inn Governor House Hotel, in Olympia, Washington.

MEMBERS PRESENT: **EDWARD HEAVEY, Chairman; CURTIS LUDWIG, Vice Chair; and LIZ McLAUGHLIN.**

OTHERS PRESENT: **FRANK MILLER, Director**
 BEN BISHOP, Deputy Director;
 SHERRI WINSLOW, Assistant Director, Field Operations;
 CALLY CASS-HEALY, Assistant Director, Licensing;
 CARRIE TELLEFSON, Special Assistant, Public Affairs;
 JONATHAN McCOY, Assistant Attorney General;
 TERRY WESTOFF, GARY PETERSON, and JEFF SELLEG,
 Financial Investigations Unit;
 and SUSAN GREEN, Executive Assistant.

Chairman Heavey introduced the WSGC staff and Commission members present.

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS AND TRIBAL CERTIFICATIONS

Ms. Tellefson referred to the list in the supplemental packet. **Commissioner Ludwig** moved for approval of the new licenses, changes, withdrawals and tribal certifications; **Commissioner McLaughlin** seconded the motion. **Chairman Heavey** asked if there were any comments from the public; no one came forward. *Vote taken, motion carried with three aye votes.*

REVIEW OF FRIDAY'S AGENDA

Ms. Tellefson said she will give a staff report tomorrow regarding the gambling bills now before the Legislature. The rules up for final action on the agenda include two related to bingo and one related to raffles. For discussion, there are nine rules, most of which have to do with commercial amusement games, and one regarding bingo gift certificates. For discussion and possible filing, there is a raffle rule, a rule on acceptance of checks, and a progressive pull tab rule. She requested adding to tomorrow's agenda six card room contracts and said that the petition for declaratory order, which is scheduled for today, should be moved to tomorrow's agenda under "Other Business" at the request of the licensees.

Chairman Heavey said he would like to discuss the Commission's draft findings on the Kalispel Tribe's proposal for a casino at Airway Heights tomorrow under "Other Business," if none of the other commissioners object; no one objected. He said the Kalispel Tribe would like to make some comments regarding the Commission's findings today, so, if no one objects, the Tribe will be heard today under "Other Business." The commissioners concurred.

MANUFACTURER LICENSE APPLICATION

BET Technology

Terry Westoff said BET Technology Inc. has applied for a Class "B" manufacturing license to sell two patented card games in the state of Washington. The company was initially issued a special sales permit. Upon review of the company's sales activities within the state and the projected revenue of more than \$60,000 dollars for 1997, as well as its continuing relationship with the Class III operations, it was determined that the company should apply for a license. The applicant owns patents for several casino games and sells the rights to play these games to various casinos. They are applying in Washington State to sell Casino War, the casino version of the card game War, and Royal Match 21, a derivative of blackjack, in Class III gaming facilities. The two games have been approved by the staff for play in this state.

The organization has an office in Carson City, Nevada, where it maintains all corporate and financial records. A summary of information regarding the corporation, investigative procedures, and the staff recommendation is provided in this report. The corporate officers for BET Technology are Eugene B. Boylan, president, secretary and treasurer; and Robert F. Corner, vice president of operations; and Russell Hebert, vice president of sales. The company was incorporated under the laws of the state of Nevada on August 28, 1990, and the articles of incorporation specify that the corporation has the authority to issue 2,500 shares of common stock. The company has issued 1,000 shares of common stock, which are not public traded. Eugene B. Boylan owns 825 shares and Robert F. Koerner owns the remaining 135 shares of stock.

The registered agent for the company in this state is Karen Daniels of the Prentice-Hall Corporation Systems in Seattle. The corporation representative in this state is Russell Hebert, who is the vice president of sales. The company holds the following gambling license: casino services industries license in New Jersey, and a non-gaming supplier and services license in Louisiana. The WSGC staff contacted the above jurisdictions to verify the company's licenses were in good standing and they were not under investigation in any jurisdiction in which they are licensed. No adverse information was noted. The criminal and personal history background checks were completed on all of BET Technology's officers and their spouses. The affiliated businesses and company officers were run through the agency's criminal intelligence unit and no derogatory information was noted.

Agents in the Financial Investigations Unit began their background investigation review on December 9, 1996, at BET Technology's headquarters in Carson City. They reviewed the corporate financial and ownership records to verify that the information disclosed on BET's application was true. Nothing out of the ordinary was noted during the review of this information. Agreements, stock information and contracts were reviewed to verify ownership. There was no indication of hidden ownership or significant influence by outside parties. They verified that patents for Casino War and Royal Match 21 are owned by BET Technology. At the conclusion of the investigation, the WSGC agents informed the applicant of recordkeeping requirements for manufacturers and suppliers and discussed the licensing process. The corporation was formed with the capital of \$1,000.00 from the company president, Eugene Boylan.

The source of funds was from operating capital of Mr. Boylan's other wholly-owned corporation, Pic-Mount Corporation, a manufacturer of 35 mm slide borders. The staff reviewed corporate transactions and determined that the companies do operate independently. Sources of funds were verified and no exceptions were noted. Based on the staff's review of the application and the financial documents, no items were noted that would preclude BET Technology from qualifying for a gambling license in Washington State. The staff recommends licensure of BET Technology as a manufacturer.

Chairman Heavey asked if anybody from BET Technology is present; **Mr. Westoff** answered no. **Commissioner McLaughlin** asked if anyone asked why a company that is seven years old has only two state contracts; **Mr. Westoff** said that's because patented games are kind of a new

thing that a lot of states don't require a license for, because it's not actually a manufactured product, but the WSGC staff determined that, because of their relationship with the Class III casinos, a license is necessary. **Commissioner McLaughlin** asked if they are operating in other states; **Mr. Westoff** answered yes, they are all over the United States; **Chairman Heavey** asked for clarification on whether Washington is one of the few states that require a license. **Mr. Westoff** said that's correct. **Chairman Heavey** asked for any other questions or comments; no one had comments.

Commissioner Ludwig moved for approval of BET Technology as a licensed manufacturer in Washington State. **Commissioner McLaughlin** seconded the motion. *Vote carried, motion carried with three aye votes.*

QUALIFICATION REVIEWS

LOOM #1774

Chairman Heavey asked what "LOOM" stands for; **Mr. Westoff** answered "Loyal Order Of Moose." He said LOOM #1774 is located in Vancouver, Washington, and was formed in 1957. The mission of the organization is to unite its membership in the bonds of fraternity, benevolence, and charity; and to assist their families in times of need, and to support charitable programs in their community. The organization has been licensed since 1974 and is governed by a board of nine members. They conducted 24 meetings during the last fiscal year. The organization has 610 active members. They have a full time club administrator and 219 volunteers who provide program services.

The Moose Family Center is their recreational and social facility where members can participate in a variety of club activities. This organization also provides use of this center free of charge to neighborhood community service organizations. This organization is currently remodeling its family center and they project it will increase membership and member participation by providing more recreational services. Other charitable and civic services include: In-depth involvement with community-based youth programs and the DARE program.

The organization did not meet its requirement for combined net income of 13 percent for its class J Bingo. They were .1 percent under with a 12.9 percent net return. For the quarters ended June 30, 1996, and September 30, 1996, the organization's combined net returned was 13.8 percent. More than 60 percent of the organization's gambling proceeds was spent providing program services, and supporting services were less than 35 percent of functional expenses. They did not have excessive reserves. Based on the staff's analysis, it is evident that the organization made progress towards accomplishing its stated purpose and the staff recommends that the Loyal Order of Moose #1774 be approved as a fraternal organization and authorized to conduct gambling activities in the state.

Commissioner Ludwig noted that, frequently, the 1996 incomes drop below the 1995 incomes in a lot of these reviews. He note the Moose in Vancouver showed an increase over the 1995 incomes in spite of the operations in Oregon. He sees it as encouraging from Vancouver Loyal Order of Moose's stand point.

Commissioner McLaughlin asked about the Lodge's income rising but the bingo net income decreasing and asked why there was a decrease. **Mr. Westoff** answered that, according to Mary Powell, the gambling manager, the bingo net income decrease was due to the decline in bingo attendance. In answer to the second question, pull tab players are consistent and Ms. Powell believes people are coming from Portland to play pull tabs. In addition, pull tabs are located in their lounge separately from the bingo operation.

Commissioner Heavey asked if anybody is present from LOOM #1774. No one came forward.

Commissioner McLaughlin moved to adopt the staff's recommendation to approve this organization as a fraternal organization and authorized to conduct gambling activities in the state of Washington. **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

RESIDENCE EAST

Mr. Westoff said this organization is located in Bellevue, Washington, and was formed in 1973. Their mission is to assist developmentally disabled adults with learning skills so they may live their lives independently in their homes, work and the communities. They have been licensed since 1994. The organization has 24 active members and is governed by a board of 10 members, including 4 officers, who conducted 12 meetings during the last fiscal year. They have a full-time executive director and 13 employees who provide program services. The organization provides training and residential services to developmentally disabled adults through group homes or support in their homes.

The organization's goal is to provide a safe, nurturing living environment in which residents learn independent living skills. During the past year, the organization has successfully raised funds to purchase its third home and add a home care program for its clients. Residence East met its required combined net income percentage of 11 percent by achieving a 11.9 percent net return. For the quarter ended September 30, 1996, the organization's net return was down to 6.6 percent. Gambling proceeds of 60 percent were spent towards program services and supporting services were less than 35 percent of functional expenses. They did not have excessive reserves and, based on the staff's analysis, the organization made progress towards accomplishing its stated purpose. The staff recommends Residence East be approved as an educational organization and authorized to conduct gambling activities in the state of Washington.

Commissioner Ludwig asked about the 65-35 percentage that's based on the net gambling proceeds. **Mr. Westoff** said the 60 percent is their net gambling proceeds for program services. **Commissioner Ludwig** asked if the staff has any understanding of what their other expenses consisted of. He said he knows \$266,000 for bingo and \$226,000 for pull tabs is after wages and rent, but asked what else they would have. **Ms. Cass-Healy** clarified that the number **Commissioner Ludwig** is looking at pertains to just the other gambling expenses as opposed to the total above. The licensees are required to report all their gambling expenses. The staff has broken out wages and rent and put everything else under other expenses. **Commissioner Ludwig** asked if that's not too high a figure, based upon the net of \$562,000; **Ms. Cass-Healy** said, without breaking it out, the total does not look unreasonable.

Commissioner McLaughlin asked if they just operated part of the year in 1994. **Mr. Westoff** said he believes they started in the last quarter of 1994. It takes awhile to start the gaming and build a clientele.

Chairman Heavey asked if there were any further questions. No one had questions.

Commissioner McLaughlin moved to adopt the staff's recommendation to approve this organization. **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

SNO KING AMATEUR HOCKEY ASSOCIATION

Mr. Westoff said this organization is located in Kirkland, Washington. They were formed in 1965

and their mission is to promote, develop and supervise youth who participate in hockey programs. They have been licensed since 1974. The organization has 530 active members and is governed by a board of 9 members, including 3 officers. They conducted 12 meetings during the past fiscal year. In addition, they have a full-time executive director and 13 employees who provide program services. During the 1995-96 season, the Association placed 653 players on various teams based on 5 age groups. Sportsmanship is a key element of Sno King Amateur Hockey Association's programs. The organization's in-line hockey program continues to provide the opportunities for players on Sno King's waiting list with experience in the organization's programs.

In 1996, a mentoring project was implemented in which the organization select two young adults who were taught how to administer youth programs. Classroom training was provided by Sno King staff members and the project was a success. The organization intends to expand the project in the future. Accomplishments for 1996 include the refinancing of the organization's long-term debt, increased membership, program expansion, and hosting the Pacific District Tier I Regionals. The organization met its net income requirement with a combined net income of 16 percent by achieving a 21.9 percent net return. For the quarter ended September 30, 1996, the organization achieved a 44.1 percent net return. The organization's proceeds of 60 percent were spent providing programs, and supporting services expenses were less than 35 percent of functional expenses. They did not have excessive reserves. Based on the staff's analysis, the organization made progress toward its stated purpose and the staff recommends Sno King Amateur Hockey be approved as an athletic organization and authorized to conduct gambling activities in the state of Washington.

Commissioner Ludwig asked about the in-line hockey program; **Mr. Westoff** said that in-line skates are roller blades and it is played outside. **Commissioner McLaughlin** moved to adopt the staff's recommendation to approve this organization as authorized to conduct gambling activities in the state of Washington. **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

DEFAULT ORDERS

MICHAEL W. HARRIS, CASE NO. 96-1194

Ms. Tellefson said that Michael W. Harris made applied to the WSGC for a card room employee license. He was served with notice of administrative charges for denial of his license due to criminal history and failing to disclose material facts on his application. He did not respond to the notice of administrative charges. The staff is requesting that his application be denied and that he not be allowed to re-apply for a period of two years.

Chairman Heavey asked what the WSGC staff's authority is to prohibit someone from applying as many times as they want. **Ms. Tellefson** said what the staff typically requests is a period of denial or revocation. In the case of revocation, it's easier to set a period of time for which a person cannot operate gambling activities. When it's a denial, it makes it easier for the staff to know how often to re-process applications. **Mr. McCoy** said he believes that the Commission has the ability to indicate what it would do in denial. If someone wants to reapply, it is within the Commission staff's authority to tell them the application will be denied.

Director Miller said the staff has done that in the past. He asked if the staff issues a period of time for denials or just for revocations. **Carrie Tellefson** said the staff has when it's been cases that have gone to hearing before the administrative law judge.

Chairman Heavey said he has no problem with denying a license, but he has a problem with prejudging something when a person comes back and contests the very thing the default order is

on.

Chairman Heavey asked if there were any comments from the audience; no one came forward.

Commissioner Ludwig moved that the Commission uphold the staff's recommendation that the licensee be denied, period. He noted that a two-year period is suggested, so the staff can re-evaluate his performance and rehabilitation during that time when he may re-apply.

Commissioner McLaughlin seconded the motion. She said she would like this issue looked at to determine if the WSGC has the authority to put a time period on an application.

Commissioner Ludwig said his motion was to confirm the denial, and the time period issue should be looked at independently. He asked if the applicant was given notice of not being able to reapply for a two-year period. **Ms. Tellefson** said typically, when the staff takes a case forward for default hearing, they send a letter stating what the staff's recommendation will be.

Chairman Heavey called for the vote. **Commissioner McLaughlin** confirmed her second and that she wants this issue looked into. *Vote taken; motion carried with three aye votes.*

MICHAEL S. DECKARD, Case No. 96-1356

Ms. Tellefson said Mr. Deckard applied for a card room employee license as well and the director issued administrative charges denying his application for criminal history and because he's on probation until year 2001. The applicant was served with administrative charges and failed to response. The staff recommends denial of his license.

Commissioner Ludwig asked if the denial is automatic because of his probation; **Mr. McCoy** said yes, it's automatic except for some conditional certifications of tribal members.

Commissioner McLaughlin moved to deny Mr. Deckard's application; **Commissioner Ludwig** seconded the motion. **Chairman Heavey** said he will vote against this motion because he believes the staff is not being consistent. He asked if a majority is needed for a quorum; **Mr. McCoy** said the WSGC needs three votes for a denial.

Vote taken; motion carried with three aye votes.

LICENSING PROCEDURES

Director Miller said Financial Investigations Unit staff wants to explain the qualification review process and the net income rule implementation procedures. The commissioners have seen the procedures and have given input. This qualification review process was developed years ago to ensure that these organizations meet the statutory requirements to conduct bingo. Regarding the net income issue, the licensees need to make sure enough of their revenue goes to their purpose. Both are required under the statute. The staff will provide the Commission with some background information. He introduced Jeff Selleg.

QUALIFICATION REVIEW PROCESS

Jeff Selleg, special agent with the Financial Investigations Unit, gave the report.

The materials from this presentation are available upon request.

Chairman Heavey asked if there were any questions from the Commission or audience members.

Commissioner Ludwig asked if the temporary certification also comes before the Commission;

Mr. Selleg said yes.

Commissioner McLaughlin said she had a question posed to her by a small bingo game up near Gold Bar. They normally get a report that they are supposed to fill out, but they haven't received it. She asked if that's something that could have been lost in the mail. **Mr. Selleg** explained that the threshold to be in this program used to be \$500,000 in combined gross receipts, which is quite a few of the licensees. Recently, it was moved to \$3 million, so a lot of the smaller organizations no longer have to fill out that form, but some still think they have to do it. They don't want to be late, so they call and ask where the package is. The change was made due to the large number of licensees and not having enough staff members to handle the paperwork. Plus, the Commission would have to look at 15-20 at each Commission meeting if the threshold had not be changed.

NET INCOME RULE IMPLEMENTATION PROGRAM

Director Miller gave a history of the net income rules. After bingo became legal, there were prize wars and it got so competitive because and put other games out of business. The WSGC was probably one of the first organizations to put prize payout limitations and net income. This stopped the prize wars and has helped make the organizations more efficient. The larger the organization, the more they have to return to the stated purposes of the organization. The statute requires them to make money for their organization's purpose and not just to pay salaries. The WSGC has one of the highest returns in the country for a organization of its size.

Gary Peterson, special agent in FIU, gave a presentation on the net income rule implementation program.

The materials from this presentation are available upon request..

Chairman Heavey asked if bingo operations need approval from the Commission before moving from one building to another; **Mr. Peterson** said yes.

Chairman Heavey asked if there are mid-year adjustments for a licensee that has not met the net income requirements. **Mr. Peterson** said that would be included in the petitioning process for a variance. After the year is over, the petitioning process occurs. There is a process during the year where they can get a variance to met the net return requirements.

Director Miller said there were occasions when this is applied to some organizations that are operating in compliance and following the rules and others were able to operate out of compliance. He said he hopes the Commission considers this in the future when these issues arise; it is a very difficult process. **Chairman Heavey** asked if these rules are the ones already adopted by the Commission; **Director Miller** answered yes.

Chairman Heavey asked if there any questions from the Commission; no one had questions.

OTHER BUSINESS

KALISPEL TRIBE CASINO PROJECT FINDINGS

Carrie Tellefson referred the Commissioners to packet number two behind tab number eight for a draft of the findings.

Nettie Alvarez, attorney for the Kalispel Tribe, said the Tribe understands that the Commission

has received these findings of fact. The tribal chairman, Glenn Nenema, could not be here today, but he wanted Ms. Alvarez to be present today to answer questions.

Chairman Heavey asked for an update on the BIA process; **Ms. Alvarez** said they have heard from Washington D.C. that the request for determination under 27.19 of IRGA is being forwarded to the technical review staff of the U.S. Dept. of Interior Indian Affairs Office for signature this week. What the Tribe doesn't know is if it's being transferred this week. In addition, the Tribe doesn't know to what extent or how long the Secretary's office will have it. The technical review committee will forward it on to the Governor's Office for concurrence or non-concurrence. Unofficially, the Tribe does know the technical review staff has found no significant problems with the Tribe's proposal.

The Secretary of Indian Affairs, Ada Deer, may not be in office much longer, but they understand that an acting director can sign and forward it onto the Governor. She said she knows that the Commission is unsure of what to do because they have not been contacted by Governor Locke, but she knows that Governor Locke is aware of the Kalispel Tribe's proposal. The Governor's Special Assistant has designated this as one of the three priority items for their Office of Indian Affairs to deal with. In conclusion, she urged the Commission to forward its findings to the Governor as soon as possible.

Chairman Heavey suggested that Director Miller make his comments and then have a summary of what's been presented in the findings. Following that, he would hear comments from the Tribe.

Director Miller said he spoke with members of the National Indian Gaming Commission today and Ada Deer has been appointed as temporary chair of the NIGC and is now in that office.

Chairman Heavey suggested that the staff title this report as "Commission Summary," not "Commission Findings," **Ms. Tellefson** agreed and said this is a summary of testimony received through letters, oral comments, and the staff's findings. He asked if the title change was okay with the other commissioners; they concurred that it was fine to change the name of the document.

Ms. Tellefson said this document was to briefly summarize what was found during the meetings and through the review process. The beginning of the document explains the Indian Gaming Regulatory Act and the provision regarding approval of gaming on newly acquired lands. These provisions require the Secretary of the Interior to make a determination that gaming on the land would be in the best interest of the tribe and not detrimental to the surrounding community. This gives the Governor of the state an opportunity to concur or not in the process. When this process first commenced, the Secretary of the Interior at that time requested from Governor Mike Lowry comments on whether the proposed casino would be detrimental to the community. At that time Governor Lowry ask the Commission to hold public hearing on this issue. There is a list of eight potential impacts of the surrounding communities:

- 1) **Impact to local residents.** The two brothers, Orville and Maynard Moe, are the landowners who gave the Tribe the land. These brothers testified that they believe they have an unresolved dispute with the Tribe and, therefore, this project may be detrimental to the Moe brothers.
- 2) **Impact on the state's negotiation process.** There are currently 19 compacts involving gambling on the reservation or on trust lands prior to 1988.
- 3) **Impacts on gambling licensing activities.** The staff received testimony from nonprofit gambling organizations in this state. Specifically, from the Big Brothers and Big Sisters operation in Spokane. They testified that this would cause them great competitive impact

and reduce their ability to provide money toward their stated purpose. The staff also received testimony from a commercial gambling operator who believed he would see an impact on his operation. The conclusion was that this could potentially be detrimental to the licensing gambling establishments in the Spokane area.

- 4) **Impact seen by other tribes.** The staff received written testimony from the Spokane Tribe that the proposed casino would be detrimental to their operations in Spokane.
- 5) **Impact on crime and law enforcement.** The staff believes, based on experiences, there have been no detrimental impacts in areas where other casinos have opened.
- 6) **Impacts on traffic.** The staff did receive some letters from the Washington State Department of Transportation and Spokane County, which both stated there would be no adverse traffic impacts.
- 7) **Water and sewer impacts.** Issues were raised regarding whether or not there would be sufficient capacity to handle the additional water and sewage needs. The staff received a letter from the city of Spokane. The Director of Hydraulic Electric Services states the city could handle the additional water and sewage needs.

The staff received numerous letters and petitions on the issue, both for and against. The majority of the comments were in opposition.

Commissioner Ludwig asked if the Kalispel Tribe had been provided with a copy of the staff's draft findings; **Ms. Tellefson** said she did not know if she had the authority to do so she had not provided them with a copy, although she had discussions with the Tribe's counsel.

Commissioner Ludwig said the draft should be concluded first by the Commission.

Commissioner McLaughlin said this draft document is basically the same one she saw last month; **Ms. Tellefson** said yes, it is the same document and is up for approval by the Commission. The final document will include all the attachments, which will be the letters, minutes and other comments.

Ed Fleisher, Counsel to the Tribe, said he has briefly looked over the WSGC staff's findings, although Ms. Tellefson had shared with him the basic contents. He suggested leaving out the findings regarding impacts on other casino operations and the community. Simply getting land into trust or reservation status if it happened in the future you wouldn't put that into the same category. They still would have to go through IRGA section 27.19 and get approval from Bureau of Indian Affairs and from the Governor's Office. He has strong objections to the argument of impact on the community.

Commissioner Ludwig asked Mr. Fleisher if he feels the same reason applies to the favored nation clause referred to with regard to what he just said about a tribe having to go back through the process to get reservation status. **Mr. Fleisher** said they'd have to go beyond reservation status; they would have to get approval from both the Secretary of the Interior and the state of Washington. At which point, it would have to be approved by both and then would become eligible for negotiation for a casino. **Commissioner Ludwig** said he knows the existing compact doesn't shortcut the process in anyway.

Ms. Alvarez said she wanted to reiterate that the impact on the negotiations process is not something this Commission was asked to do. Another issue is the theory that this would be precedent-setting. The situation the Kalispel Tribe is in now is one that no other tribe could ever duplicate. The compacts may be similar, but each tribe comes with unique circumstances. She

sees no evidences to support the theory that this may encourage other tribes to buy land for casinos. With regard to the Spokane Tribe intending to seek the purchase of land in downtown Spokane area for gambling, they may go purchase some property, but that's all they may do. Essentially, the Spokane Tribe has been a thorn in Kalispel Tribe's side because they have been alleging they will be detrimentally impacted. One of the arguments she made to the BIA was that she has not seen any facts at this point submitted to the BIA.

Regarding the favored nation status issue, she agrees with Commissioner Ludwig in that it falls within the same category and it's not relevant for the WSGC staff to review. In addition, it's related in that each tribe stands on its own merits. The BIA is going to review every tribe's application for after acquired property based upon its own facts, merits and the law. What the Kalispel Tribe is trying to propose is legal pursuant to federal statute and the concurrence process provided for by law. Approving the Kalispel situation does not give the Kalispel Tribe any favored status over any other tribe.

Commissioner Ludwig said his comment regarding the favored nation provision was not his opinion, it was a question to Mr. Fleisher.

Chairman Heavey suggested that this discussion be suspended for today and be taken up tomorrow under "Other Business," at which time the Commission will make a determination of what to do next. The commissioners concurred.

STATE COUNCIL ON PROBLEM GAMBLING

Gary Hanson, Executive Director of the WSCPG, said that last year when the Council made a presentation before the Commission, they discussed the youth awareness program and wanted to update the Commission on last year's statistics. The WSCPG distributed informational packets the public schools. The WSCPA gave out 1,500 packets and they have another 500 to 1,000 to go. In the spring, they hope to put on a series of workshops for school counselors. In the Olympia area, they have to go through each school district individually, so that will take longer. He handed out a packet used for this program to the commissioners and staff.

Commissioner Ludwig said he knows of someone in Kennewick who has Lottery and wants a copy of problem gambling posters. **Ms. Tellefson** said the WSGC has a lot of brochures in stock and she would encourage people to use those instead, since the agency is out of posters.

Commissioner Ludwig asked if the Lottery Commission is doing anything like the signs required by the Gambling Commission; **Mr. Hanson** said the Lottery requires a small decal and admits they have only about a 70 percent compliance rate.

Chairman Heavey asked if anyone from the audience would like to make comments. No one came forward.

Chairman Heavey adjourned the meeting.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, FEBRUARY 14, 1997

Chairman Heavey called the meeting to order at 9:30 a.m. at the Ramada Inn Governor House Hotel, Olympia, Washington. He introduced the WSGC the staff and Commission members present.

MEMBERS PRESENT: **EDWARD HEAVEY, Chairman; CURTIS LUDWIG, Vice Chair; and LIZ McLAUGHLIN**

OTHERS PRESENT: **FRANK L. MILLER, Director;
BEN BISHOP, Deputy Director;
SHERRI WINSLOW, Assistant Director, Field Operations;
CALLY CASS-HEALY, Assistant Director, Licensing;
CARRIE TELLEFSON, Special Assistant, Public Affairs;
JONATHAN McCOY, Assistant Attorney General;
and SUSAN GREEN, Executive Assistant.**

APPROVAL OF THE MINUTES FROM THE JANUARY 9-10, 1997, MEETINGS

Commissioner McLaughlin moved to accept the minutes from the January 9-10, 1997, Commission meetings in Stevenson, Washington, as set forth in the agenda packet; **Commissioner Ludwig** seconded the motion. *Vote taken, motion carried with three aye votes.*

STAFF REPORTS

LEGISLATIVE UPDATE

Ms. Tellefson said there is a legislative summary found in the commissioner's supplemental handout packet #2. She gave an overview of the bills on the list. Some of these bills are also before the Commission as rules. The first two, House Bill (HB) 1317 and 1318 relate to amusement games. HB 1317 provides that regional shopping centers, restaurants, or department/grocery stores larger than 10,000 square feet may not offer prizes that cost them more than \$500 and may not allow wagers of more than \$1 if school aged children are allowed to play. HB 1318 would allow exclusive agreements for the purchase/sale of amusement games for a period three years that can be automatically renewed unless either party terminates the agreement 30 days in advance. These two bills were introduced in the House Commerce and Labor Committee and have not moved beyond that.

HB 1363 and companion bill SB 5422 are agency request bills that were referred to the House and Senate Commerce and Labor committees and each had hearings. The House Commerce and Labor Committee recommended passage and the bill was sent to House Rules on February 6. The Senate bill has not moved through committee yet.

HB 1364 and SB 5421 are companion bills and also agency request legislation that would clarify the seizure statute with an amendment. The amendment would clarify: when gambling related items are seized, if a person does not notify the seizing law enforcement agency of his/her claim

of ownership, the item is deemed forfeited after a specific period of time; the owner of the device is entitled to a hearing to determine whether the item seized is a gambling device and whether, if it is a slot machine, it qualifies as an "antique." The Gambling Commission agents who seize items are exempt from personal liability. These two bills have each had hearings and a slight change was made to the language.

Ms. Tellefson said HB 1368 allows fund raising events to be conducted during a 72 hour period twice (instead of once) per year when no gambling occurs between 2 a.m. and 6 a.m. It also allows FREs 4 (instead of 2) times per year not to exceed 20 hours per occasion and so long as no gambling occurs between 2 and 6 a.m. This bill was introduced into House Commerce and Labor Committee, had a hearing on February 5, and has not moved out of the committee yet.

Ms. Tellefson said HB 1404, Punchboards and Pull Tabs, was sponsored primarily by the WCCGA. It would change the way taxes are calculated on various types of gaming and would authorize \$1 pull tabs. There was a hearing on this bill in the House Commerce and Labor Committee; it has not moved beyond that.

HB 1739 and SB 5581-- defining gross receipts -- would define gross receipts as the amount received from a pull tab game minus prizes and the cost of the game. It was referred to both the House and Senate Commerce and Labor committees and there was a hearing yesterday.

HB 1741 and SB 5560 -- social card games -- attempts to redefine card games so as to allow player supported progressive jackpots to be used as the player bank and potentially to allow house banking. This was heard in the Senate yesterday but it has not moved beyond that point. The WSGC staff has been working with the industry on this bill and with Senate staff to make clarifications to the bill.

HB 1742 -- punchboards and pull tabs -- changes the limit on pull tab chances from 50 cents to a dollar. This was introduced into the Commerce and Labor Committee and has not had a hearing yet.

HB 1763, compulsive gambling program, was requested by the Washington State Council on Problem Gambling. The executive director of that agency, Gary Hanson, who spoke to the Commission yesterday, went to the Legislature to ask that \$150,000 be transferred from the Lottery Commission's budget to the Gambling Commission's budget so the Gambling Commission could use this money to help on the education and awareness program. The Commission currently designates a portion of its budget each year to the Council. This bill was referred to the House Commerce and Labor Committee but has not yet been scheduled for a hearing.

SB 5034 redefines bona fide charitable or nonprofit organizations and reduces the number of active members required for a gambling license from 15 to 9. It passed out of the Commerce and Labor Committee and is now in Rules.

SB 5265 -- approval of compacts and amendments, was proposed to require Senate approval of all compacts prior to going to the Governor during the regular Legislative session. This bill was heard before the Senate Commerce and Labor Committee on February 6. There was an amendment added to the bill so that any technical or regulatory amendments that don't relate to the scope of gambling would be exempt from this requirement. This bill has passed to rules.

One more bill the Commission might want to take note of is SB 5522, which was proposed by Senator Heavey that would also accompany a Senate Joint Resolution to amend the State Constitution to prohibit gambling devices specifically. It was introduced in the Senate Commerce and Labor Committee and has not had a hearing. She has been told that there will probably not be a hearing on the bill.

Commissioner McLaughlin asked if the Commission ever takes a position on a bill; **Ms. Tellefson** said that is up to the Commission, and there are members of the industry that would like to ask the Commission some questions about some of the issues. **Chairman Heavey** said that would be taken up under the public comment portion of the agenda. He asked the audience members to wait until that portion of the agenda to share their thoughts on legislation.

RULES

BINGO AMENDMENTS

Amendatory Section WAC 230-20-240 Bingo equipment to be used

Ms. Tellefson said this is up for final action today and would allow a different variation of bingo balls to be used and different types of bingo games to take place. The staff recommends adoption of this rule.

Chairman Heavey asked if there were any comments regarding this proposed rule.

Greg Murray, president of the Washington Charitable and Civic Gaming Association (WCCGA), said his organization supports the adoption of these rules as they are filed.

Commissioner McLaughlin moved to approve this amendatory section; **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

Amendatory Section WAC 230-20-247 Keno bingo – Definitions and requirements

Ms. Tellefson said this is up for final adoption today. This amendment would require that keno prizes greater than \$10 would need to be documented and that keno winning cards and cash register receipts would need to be retained for any tier of prizes. She noted that, on the third page of the rule in section 7B, the term, “bank” in between “keno bingo” and “session” should be deleted.

Chairman Heavey asked counsel if that would be considered a material amendment requiring the Commission to hold this for another month; **Mr. McCoy** said he didn't think it was a material amendment. **Ms. Tellefson** said the staff recommends final adoption of the rule as amended.

Commissioner Ludwig moved to amend the proposed rule on page 3, section 7B, in the second line of the second sentence to delete the word, “bank;” **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with three aye votes.*

Commissioner Ludwig moved to adopt the amendatory section as amended; **Commissioner McLaughlin** seconded the motion. **Chairman Heavey** called for public comments; **Mr. Murray** said the WCCGA is also in favor of this rule change. *Vote taken; motion carried with three aye votes.*

PETITION TO AMEND RAFFLE RULE

Amendatory Section WAC 230-20-325 Manner of conducting a raffle

Ms. Tellefson said this petition is by a group called Moneyman Fund Raising. The intent is to allow raffle tickets to be sold at different prices. There is a problem in that the version of the rule that was filed is not the current version, because there was a change going at the same time. The staff requests that this petition be held over for one more month in order to allow the staff time to meet with the petitioners to discuss the changes that need to occur. **Chairman Heavey** asked if there were objections from any of the commissioners or audience members with regard to holding this rule over; no one objected. The rule will be held over until next month.

COMMERCIAL AMUSEMENT GAME RULES

Amendatory Section WAC 230-02-520
School-aged minors defined

Amendatory Section WAC 230-04-138
Commercial amusement games – authorized location

Amendatory Section WAC 230-08-060
Commercial amusement game records

Amendatory Section WAC 230-20-600
Amusement game – licensee to give notice to local police prior to conducting

Amendatory Section WAC 230-20-630
Amusement games – fees, rules, prizes and variations in objects to be posted – fees to be paid in cash or scrip – prizes not to differ from those posted

Amendatory Section WAC 230-20-700
Coin or token activated amusement games – standards

Ms. Tellefson said these six rules are separate from the two that were left in the following petition. They all relate to commercial amusement games. Items 5A-F have to do primarily with record keeping and amusement device standards and requirements. They define school-age minors and allow K-mart type stores or department stores to have amusement devices, which is not currently allowed under the rules. The staff recommends further discussion of this package. **Chairman Heavey** asked for comments from the audience.

John Woodring, representing the Washington Amusement and Music Operators Association (WAMOA) said his organization supports these proposed amendments. He said they have worked with David Shaw of the WSGC staff recently on a change to this rule change and are in agreement with the language now in these proposed amendments.

Chairman Heavey asked if the changes need to be adopted in the rule as they were filed; **Ms. Tellefson** said that can be done either this month or next month. **Chairman Heavey** said the changes will be made next month. He said it would be useful in the future to know what any amendments to filings are specifically without having them incorporated into the materials set forth to the commissioners. That way, the public and the commissioners are all aware of what the changes were from the originally filed rule change proposal. **Ms. Tellefson** said the changes noted are in WAC 230-20-700 (item 5F). What she usually does is put the original version of the rule change behind the amended version, but that was not done in this case. The changes to item 2C, which provides that operators need to only provide information on where the change machines are located, not actually provide the change machines themselves. This change was discussed when the rules were filed at the January 1997 meeting in Stevenson.

Commissioner McLaughlin said she reads it to say they must provide the change services; **Ms. Tellefson** pointed out it says "in the vicinity." **Commissioner McLaughlin** asked if they have to provide change services there or can they direct people, say, across the street to a bank. **Ms. Tellefson** said she thinks it's optional. **Mr. Bishop** said he talked to one of the operators and it was never the intent of the staff to require to have change available there, but the machine must have a notice that states the machine does not give change and where the nearest change is available, such as from a cashier. To require the operator, who may have an office in Vancouver and a store in Seattle, who be too costly. The public must be informed if the machine does not give change. The staff made a mistake when the rule was filed; an agreement had already been reached but the change in language wasn't incorporated. **Chairman Heavey** noted this is similar to WAC provisions dealing with on-site machines having to provide change; **Mr. Bishop** said it's the same concept as with pull tab machines in that they have to notify the player that the device does not give change and the fact that they can get change somewhere else.

Commissioner McLaughlin said it should say "information" rather than "services;" **Chairman Heavey** said no, the purpose is so they can get change. If just information is given, that doesn't require them to have the ability to get change. The intent is to require them to have a service where they can get change. He asked if that answers her questions; **Commissioner McLaughlin** said she won't worry about it if everyone else is satisfied.

Ms. Tellefson said both versions would be brought before the Commission next month, the filed version and the proposed version; it was an oversight.

COMMERCIAL AMUSEMENT GAME PETITION

Amendatory Section WAC 230-12-230

Agreement restricting freedom to buy and sell – Prohibited

Amendatory Section WAC 230-20-685

Commercial amusement games – wager and prize limitations

Ms. Tellefson said this is still in the form of a petition and the two rules are the same as the two amusement game bills reference in her earlier report. One rule would allow exclusivity agreements for a limited period of time, and the second would allow wagers of up to \$1 and prizes of up to \$500, as opposed to \$100. These rules are up for further discussion with possible final action in March.

Chairman Heavey asked if there are any public comments regarding this petition.

Mr. Woodring testified that, with regard to the rule revision proposal on exclusivity agreements, WAMOA supports this provision and said it is consistent with the nature of the industry. Right now, Commission rules prohibit exclusive agreements between owners of amusement games and operators of locations where these amusement games are placed. Because of the nature of the industry and expense of purchasing and providing amusement games, it would be prudent to have the ability to enter into an agreement, which would be an exclusive agreement, to locate an amusement device at a location for a period of up to three years. That period could be extended or renewed under this proposal for another three year period if neither party gives notice of termination of the agreement at least 30 days prior to the termination date. The exclusivity provision would apply to the parties entering into an agreement for the owner to supply to the location owner devices, materials, products, equipment or services, which are used in connection with a particular amusement game. The amendments previously discussed clarify that it references amusement games as well as an amusement game, so that each game doesn't have to have a separate agreement. WAMOA supports these provisions.

In regard to the changes to WAC 230-20-685, **Mr. Woodring** said it would allow for the raising of the minimum prize to be offered for amusement games not to exceed \$500 in cost to the operator. It would also allow for the maximum wager for play to be raised from 50 cents to \$1. Because of the nature of the industry and because of the increase in the value and the cost of prizes, they believe this \$500 figure reflects what reasonable prizes would be for people playing these amusement games at various locations. The maximum wager going from 50 cents to \$1 also reflects what is currently happening in the industry. The maximum wager would be driven by what the competition is doing and may very well be less than \$1.

Dale Walker, of Music Vend Distributing and as a member of WAMOA, said the language used in the exclusivity clause portion of this petition would mimic existing Gambling Commission language. To clarify what they do, he said they buy a piece of equipment and put it into somebody else's business and share the revenue out of that machine. They are not looking for an exclusive right to sell a machine to that location, nor are they looking for an exclusive restriction that would prevent him from buying a machine from any other distributor. The exclusivity clause refers to a distributor placing a machine in a location and not allowing the owner of the establishment to allow another distributor to place a machine next to it. Regarding wager and prize limitations, he feels the existing limit was set somewhat arbitrarily early in the days of operating amusement games. They need the opportunity to increase that now, especially the prize limit, so they can continue to offer merchandise that is proper. The wager increase would probably not occur immediately; 50 cents is appropriate for now; however, more expensive equipment is on the way and a higher wager will be needed in the future to place the new equipment in establishments and recover costs.

Commissioner Ludwig asked if the rule is necessary to permit people to enter into exclusivity agreements; **Mr. Walker** said they are specifically prohibited from entering into any agreement with an exclusivity clause by Commission rules. **Commissioner Ludwig** said he reads the language to say it covers purchases but not leases and not rentals. **Mr. Walker** said that, when they enter into a relationship with a bowling alley or skating rink, etc., they have to provide a written agreement to the Commission. They have had agreements that had exclusive clauses rejected by Commission staff.

Chairman Heavey said it is his understanding that the reason for that is it is the general policy of the legislation to prohibit exclusive agreements in order to prevent the abuses that occurred in the 1930s in metropolitan centers where people would come in and threaten, "you're buying my glasses and if you don't, you don't have a restaurant." **Ms. Tellefson** agreed and said the rule was intended to apply primarily to gambling equipment and devices because of the historical problems with gambling equipment and devices. Although amusement games are in the gambling family, they are not exactly gambling, so there may be some different policies that would more appropriately apply to amusement game devices.

Chairman Heavey said he has a problem with a rule talking about particular clauses in an exclusivity agreement. If it's appropriate for the Commission to adopt a rule that says a contract will include automatic renewal could be like a clause stating that the floors will be swept every Saturday. He suggested changing the language to state, "the exclusivity contract must be approved by the Commission." It is not appropriate for the Commission to deal with particular clauses in a contract by general rule. **Mr. Woodring** said they wouldn't have an objection to such a change. **Chairman Heavey** said he doesn't have a problem with exclusivity agreements and he recognizes that it's not economically feasible for them to put in a \$5,000-20,000 machine that comes out in a week. There has to be some commitment in advance. **Mr. Woodring** said his group has had long discussions with Commission staff on this rule change over this very issue and reached an agreement that resulted in the three year provision. **Chairman Heavey** said the rule with his proposed change would provide that they could enter into exclusivity agreements for a period of up to three years, but he would have a problem with a rule getting into great detail on the terms of what the contract provides for. **Ms. Tellefson** said the WSGC staff

can work with the petitioners to come up with a new version for next month's meeting. **Mr. Woodring** asked for clarification. He asked if there's any problem with the three year term on the exclusivity agreements; **Chairman Heavey** said he only has a problem with the last sentence of that section, which begins, "the contract may provide that..." He has no problem with the provision, just with having it as part of the rule. Then he would like the Commission to approve each contract individually. **Mr. Woodring** asked for clarification on if this language were to be deleted and the provision was instead placed in an agreement between the location owner and the owner of the machine that there could be a renewal for another three years, would the agreement be acceptable under this proposed amendment. **Chairman Heavey** said a contract would be drawn up that would not exceed three years and add such terms as are deemed appropriate, then the Commission decides whether to approve the contract. If it's approved by the Commission, then it's approved. The Commission reserves the right to reject it if they don't want the automatic renewal provision or something else that's in the contract. **Mr. Woodring** said that would be fine with his group. **Chairman Heavey** said he is proposing that the Commission might want to look at each individual contract, which is what they do with the individual card room contracts.

Commissioner McLaughlin asked how many contracts there would be to approve; **Mr. Walker** responded that they have contracts with every location that is licensed right now on file. **Mr. Woodring** said his group supports having the Commission approve these contracts. **Commissioner McLaughlin** said she is concerned about the time it would take to review and approve each and every contract.

Ms. Tellefson said these types of agreements are currently reviewed and approved by the Commission staff; **Mr. Bishop** said yes, the staff currently reviews contracts to be sure they meet the requirements of the rules. He said the continuation clause, as proposed by WAMOA, makes it an indefinite contract. **Mr. Woodring** said the way it was drafted includes a six year maximum; beginning with three years with the possibility of another three years. He said his group still supports the Chairman's proposal.

Chairman Heavey said he has no problem with them working with staff to approve a form contract, as long as it meets the requirements. His intention is to still have the Commission approve each, but he realizes not everyone may feel this way. **Commissioner McLaughlin** does not agree that the Commission members should review and approve each individual contract.

Chairman Heavey said this is a long provision and asked if the rules contained within the petition are rules before the Commission; **Ms. Tellefson** said the petition was originally filed and then it was put into rule form for the code reviser. The petition covers both items five and six.

Chairman Heavey asked if there were any questions or comments on these rule changes; no one came forward.

BINGO GIFT CERTIFICATES

Amendatory Section WAC 230-20-115 Gift Certificate – requirements

Ms. Tellefson said is up for further discussion and would limit the number of times gift certificates can be awarded as prizes to four occasions per year. The staff has been working with the nonprofit study groups on this rule change. The staff recommends further discussion.

Chairman Heavey asked if there were any comments; no one came forward. He reminded the audience there will be one more opportunity to comment at the March Commission meeting.

SALE OF RAFFLE TICKETS BY NON-MEMBERS

Amendatory Section WAC 230-20-070

Regulation of manager, operators, and other employees – Charitable or nonprofit organizations

Ms. Tellefson said staff is asking that this be filed for further discussion. This would allow, not only members of an organization to sell raffle tickets, but also others who are supervised by members. She said that, from a practical perspective, this does occur now. The rule would legitimize what is already happening and would assist nonprofit and charitable organizations. Staff recommends filing for further discussion.

Chairman Heavey called for public comments.

Ric Newgard, Seattle Junior Hockey, said they support the rule change but also request that a change. It says details about the relationships are part of the application process, but his organization and others only renew their raffle licenses yearly, so it would difficult to project who would be selling the raffle tickets for sales later in the year.

Ms. Tellefson said the staff has discussed this very issue and have a proposed change to bring forward next month. The change would allow the licensee to just keep the information available for the staff to look at.

Chairman Heavey asked if an amendment has to be adopted for that, or if the rule can be filed as amended. The rule isn't filed yet, so if the discussion brings forth changes, then the action can be taken on the amended rule proposal; **Mr. McCoy** said that, yes, at this point no rule has been filed and it can be amended prior to filing. As an additional comment, he said he recognizes that there is a practice going on, but the statute itself that defines a raffle specifically requires that they be members. The Commission has the authority to define what a member is because it does not define members. He has a problem with allowing this practice to occur when the statute itself requires that they be members.

Mr. Bishop said the statute actually says to be involved in the operation or management, not to specifically sell tickets. If a member allows his wife to sell a raffle ticket to a friend, the requirement can't be enforced anyway. For example, if a member of the board of Safeway is on the Easter Seal Foundation Board, they routinely sell raffle tickets at the Safeway cash registers. **Mr. McCoy** said he should clarify that, yes, the statute does say the operation. **Mr. Bishop** said that the staff has said, as long as these people are under the direct supervision and there's no employee relationship, then they are not really involved in the operation. The intent is to codify this practice.

Chairman Heavey asked if there were any further comments from the public.

Don Grothe, ZDI Gaming, made the comment that school children bring raffle tickets home from school to sell all the time and he can't understand why the Commission has anything to do with regulating raffles anyway.

Chairman Heavey asked if anyone else had comments; no one came forward.

Commissioner Ludwig asked if this should be amended before or after filing; **Ms. Tellefson** said it could be amended now and filed as amended with the changes. Or, the Commission could file it as is with the code reviser's office and come back next month with amended language, which would be the easier choice.

Commissioner Ludwig moved to file this rule change as is; **Commissioner McLaughlin** seconded the motion. **Chairman Heavey** asked if there was any further discussion; no one came forward. He said he would like the issue that Mr. McCoy raised looked into; **Ms. Tellefson** said yes, that would be looked into.

Vote taken to file for further discussion; motion carried with three aye votes.

STANDARDS FOR ACCEPTANCE OF CHECKS

Amendatory Section WAC 230-12-530 Acceptance of Checks – requirements

Chairman Heavey said this item is withdrawn.

PROGRESSIVE PULL TAB RULE

Amendatory Section WAC 230-30-025 Progressive Jackpot Pull Tab ((games)) series - Definitions – Restrictions ((~~Manner of conducting~~ ~~Record keeping~~ ~~Approval~~)) Operating procedures

Ms. Tellefson said the staff has been discussing this rule with the industry. There was a group of rules before the Commission previously to implement progressive pull tabs, which are the games with a jackpot attached to the game that can be carried over. These games can be played either through machine or with fish bowls as with the carry-over version. When it came to implementing the rule, there were some issues regarding the prize pay-out percentages and whether the jackpot needed to be included in the 60 percent prize pay-out and whether the game needed to be played out until it was won. The WSGC staff came up with some clarifications in conjunction with the industry to clarify that they can include the jackpot in the 60 percent as long as the winner is paid out. Then an accrual rate needs to be set. The staff requests that this rule be filed and actually adopted with changes. Staff is asking for two things; one, that it be adopted as an emergency rule and, two, that it be filed for further discussion with final action in April. The basis for the emergency rule is because there is a potential for players to be misled regarding what the game actually does.

Chairman Heavey asked if there were any questions.

Commissioner Ludwig asked if this is similar to the pull tab game that was discussed at the last meeting or prior to that when there was some confusion about buying out the whole fish bowl and getting less than the player might have first expected. **Ms. Tellefson** said the concept is related, but it's not exactly the same issue. The general issue is making sure the player knows what they are playing for and whether or not the prize will actually be won. This proposal corrects that problem. The emergency is to protect the consumer; the public.

Chairman Heavey asked if there were any comments.

Mr. Murray said the WCCGA supports filing and adoption as an emergency rule.

Rob Saucier, WSLBA, said his organization also supports this as an emergency rule.

Clyde Bock said he is speaking on behalf of himself. He has one clarification he'd like to see under section E4 under WAC 230-30-025, where the last sentence says, "the minimum starting jackpot of the subsequent series must be equal to or greater than the starting jackpot amount of the previous series." He asked if that should be "equal to or greater than the ending jackpot of

the previous series.” **Mr. Bishop** said yes, that change should be made. **Mr. Bock** said his other clarification is under section 4D to ensure that what the change does is take the maximum limit of \$5,000 and change it to be a maximum contribution to the jackpot of \$5,000 per series. He asked if that’s what this means by changing from a \$5,000 maximum jackpot to where a series can contribute to a jackpot for a maximum of \$5,000. **Ms. Winslow** said yes, that’s correct.

Chairman Heavey said the record should reflect that Mr. Bock’s interpretation is correct and the rule should be filed, if it is filed, to reflect the issues Mr. Bock pointed out. He asked for any further comments from the public; no one came forward.

Commissioner Ludwig moved to amend the proposed amendatory section to WAC 230-30-025 on page 3, section 4E, on the last line by eliminating the word “starting” and inserting the word “ending” so it reads, “greater than the ending jackpot amount of the previous series.”

Commissioner McLaughlin seconded the motion to amend this proposed rule change. *Vote taken; motion carried with three aye votes.*

Commissioner Ludwig moved to file rule proposal as amended for further discussion and file it as an emergency rule; **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with three aye votes.*

CARD ROOM CONTRACT APPROVALS

GOLDEN NUGGET-- Rake on two tables and jackpot schemes

ROXBURY LANES -- Alternative collection of fees on two tables and one jackpot scheme

THE GROVE -- Alternative collection of fees on one table only

CAFÉ INTERNATIONAL -- Alternative collection of fees on four tables

THE GREAT WALL -- Alternative collection of fees on three tables and three jackpot schemes

SONNY’S CASINO – One additional table, four tables with alternative collection of fees, and one jackpot scheme.

Ms. Tellefson said these six card room contracts are before the Commission for approval and the information is located in the Commissioners’ handout packets #2 under tab #3. The required deposits have been received for each of these contracts. The staff recommends approval.

Chairman Heavey asked if the Commission needs to call for public comment on these; **Mr. McCoy** answered that the Commission is not required to on this matter.

Commissioner McLaughlin moved to approve these card room enhancement program operation agreements as read into the record; **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

COMMENTS FROM PUBLIC OR PUBLIC OFFICIALS OR BOTH/GENERAL DISCUSSION

Chairman Heavey said one reason for holding a meeting in Olympia during the legislative session is to allow for any members of the legislature or the Governor’s Office. He asked if there were any public officials; no one came forward.

Chairman Heavey said there are two issues left to discuss. The Kalispel tribal casino proposal issue, the summary for which was held over from yesterday. The Governor’s Office had requested that the Gambling Commission make findings and a recommendation on this issue. He called for a short break prior to continuing this discussion. There will also be a discussion about the pending card room petition.

****RECESS****

OTHER BUSINESS

KALISPEL TRIBAL CASINO PROPOSAL Commission Findings

Ms. Tellefson said information on this item is found in the Commissioners' handout packet #2 under tab #8.

Ed Fleisher, attorney representing the Kalispel Tribe, said they have given their suggested changes to the Commission members, as requested. These are changes they suggested to the draft #3. He also gave them a memo dated today from him regarding finding #2 marked. There are three sections of the Commission's proposed findings they want to address. He introduced Richard Ralston.

Richard Ralston, attorney for the Kalispel Tribe, said the first change they are requesting is to regarding the Spokane Raceway where it says, "The Moe brothers stated that they intended.." It is a business dispute that may have to be dealt with in the negotiations and possible in arbitration. He said the question of intent at the time the document was signed will come up and he doesn't want to have someone show him the Commission's findings that include the Moe brothers' intent. He would like to see that changed. In the next paragraph about the joint venture, he would like to see it deleted. He said that, in this state, there is no such thing as a "joint venture," there are partnerships in this state that are controlled by the Washington Partnership Act. Under this Act, a partner can withdraw from a partnership, which triggers the arbitration procedures under the Act. This phrase seems to make a finding that might color that discussion at a later date and he doesn't think it's necessary to include it in the Commission's findings.

Commissioner McLaughlin asked, if that is an important point, why the term "joint venture" was used if it's really a partnership; **Mr. Ralston** answered that, although he did not draft it, people in this state often use the words "joint venture" in common parlance, but the laws that deal with it are the partnership laws. **Commissioner McLaughlin** said if there's a contract that says there's a joint venture that requires a unanimous vote of the governing board, then that should hold true. **Mr. Ralston** said not necessarily, and he doesn't think that legal issue needs to be determined here. The Washington Partnership Act would be relevant to the interpretation of the document and the manner in which the Tribe withdrew from the partnership would also be relevant. He doesn't see the need for the Commission to make a finding that might affect what happens later down the road.

Commissioner McLaughlin said she will wait until he's finished and then will ask Jon McCoy for his opinion.

Commissioner Ludwig said he agrees that this Commission should not resolving that issue at all, but he wants to ask what the consideration was for the transfer of land. **Mr. Ralston** said he can't answer that question. **Commissioner Ludwig** said he understands and was just curious.

Chairman Heavey asked if the statement he is asking be deleted is an accurate statement. **Mr. Ralston** said it is misleading in it's accuracy because it says that the document "can only be terminated by..." If that's changed to say, "the document says it can only be terminated by," that would be better because these findings will be closely read if anyone actually arbitrates the issue. He doesn't think either of those sentences would make any difference as information to the Governor, but he is looking down the road to possible future use of these findings.

Chairman Heavey said the statement “attempting to” in the previous sentence ought to be stricken. It says, “the Tribe addressed a letter to the Moe brothers terminating the joint venture agreement,” and then the next sentence should be, “the joint venture agreement provides that it can be terminated only upon the unanimous vote of the governing body” is an accurate sentence without being editorial. **Mr. Ralston** said those are two correct statements and the way Chairman Heavey has stated the second one takes out what he was worried about. **Chairman Heavey** said that simply states the facts and he would be in favor of that language. He agrees that the Commission is not the appropriate forum in which to make a determination as to whether the Kalispels or the Moe brothers or both are wrong.

Mr. Ralston said on page three at the top, it states the Tribe’s position and he asked that this be place in the findings. He said the Tribe asks that the next one be deleted because it makes the determination that the Moe brothers would be detrimentally impacted by a casino on the land. He doesn’t see how the Commission could reach that conclusion or why it would even have to.

Commissioner Ludwig said that, on that issue, he would think that this proposal would not be detrimental to the Moe brothers and that it might give them a much more valuable claim than they have now. **Mr. Ralston** said he is not going to agree with what Commissioner Ludwig has said, but he understands the point he is making. **Commissioner Ludwig** said he agrees with Mr. Ralston that it could go either way.

Chairman Heavey said these changes weren’t covered individually. He asked if the other commissioners agree to making the first change mentioned with regard to the Moe brothers stating what they intend. Commissioners McLaughlin and Ludwig agreed to the change. **Mr. McCoy** said he agrees that the changed language makes it more clear.

Chairman Heavey asked if the commissioners agree with the next change about “the Tribe’s position is that...” **Commissioner McLaughlin** asked why it was written that way, “based on the above dispute,” **Chairman Heavey** said the Tribe’s position is that it is a business decision to be resolved through negotiation and arbitration. **Ms. Tellefson** said the reason she wrote the last paragraph the way she did is because her perspective is that the dispute is not currently resolved. Not whether it would or wouldn’t be detrimental, but the issue is that the dispute, to her knowledge, is not resolved between the Moe brothers and the Tribe.

Commissioner McLaughlin said then it should say “could” rather than “would” or leave it out entirely.

Chairman Heavey asked if Ms. Tellefson had any problem with “the Tribe’s position is that...” **Ms. Tellefson** said she has no problem with that change.

Commissioner Ludwig said that language where it says “dispute to be resolved” indicates that it’s not yet resolved. **Chairman Heavey** agreed and said the implication of that is that the dispute is unresolved. Hearing no objection from commissioners, he said that would be added.

Chairman Heavey asked if there was any objection from the commissioners on the next sentence beginning, “Based on the above dispute...” **Commissioner Ludwig** said he doesn’t think the Commission can conclude that there is a negative impact or a positive impact. **Ms. Tellefson** said that, in recalling the testimony of the Moe brothers and their letters, they just primarily wanted to make the Commission aware of the dispute. They did not ask the Commission to find that they would be detrimentally impacted.

Commissioner Ludwig said does not recall if the Moe brothers spoke in favor or in opposition of this proposal. **Ms. Tellefson** said they didn’t express one way or the other, but they said they hope to get this issue with the Tribe resolved. **Chairman Heavey** said the Moe brothers spoke in opposition because if it goes ahead, they’ve lost their bargaining power. **Mr. Ralston** said that’s

what they are claiming, but if this goes ahead, they won't be saying that. They will, instead, claim they've gained bargaining power. It is a dispute that has to be resolved. **Ms. Tellefson** said the letter received by the WSGC staff from the Moe brothers was just information for the Commission. They told her they also sent a letter to the Secretary of the Interior, which may have been a request to hold up the process, although she has not seen the letter.

Chairman Heavey said he doesn't know if the Moe brothers would actually be detrimentally impacted and it may or may not change their bargaining position, but he is not opposed to removing that sentence. He said Commissioner Ludwig may be right in that they could make money from this whole proposition.

Don Kaufman, Big Brothers and Sisters of Spokane, said his understanding is that the Moe brothers stand to gain only by revenue sharing with the casino. According to an article in the Spokane paper, they claim to have 49 percent of the revenue that would be generated from that land. He said the point is, they cannot share casino revenue with a tribe. He suggested at least putting in the word "could" instead of "would" rather than removing the entire section. There is definitely the possibility that they could be detrimentally affected.

Commissioner McLaughlin said that both parties could actually be detrimentally impacted. **Mr. Ralston** said the 49 percent figure did not deal with the Class III gaming operation. Any possible gaming operation was dealt with in a separate provision in the contract and was essentially left as something to be done later. The 49 percent provision was for other kinds of business that might be undertaken and were also contemplated at the time the agreement was entered into.

Mr. Kaufman said he is not disputing what Mr. Ralston just said. He wanted to point out that this Tribe went on record when this land transaction occurred and said, on public record, that they did not intend to gamble at all at the time they bought the land. **Mr. Ralston** said there was a three year lapse from when that statement was made and people make business decisions.

Chairman Heavey said he does not want personal arguments or ad hominid remarks. He asked the Commission what they want to do with the language.

Commissioner McLaughlin said she'd like to hear from the Assistant Attorney General. **Mr. McCoy** said he thinks there is a debatable point as to whether they would be detrimentally impacted. An indication that there's still an active dispute over the status of this agreement needs to be included. It could be a separate statement at the end indicating it's still an active dispute.

Commissioner Ludwig said that, since the sentence about Tribe's position is being left in, he asked about ending this paragraph by saying the Commission has made no conclusion as to whether the Moes would be negatively impacted. If it states the Commission made no findings as to the impact on the Moes, that leave it completely outside of the Commission's jurisdiction. **Mr. McCoy** said that would be okay with him.

Mr. Ralston said his final point addresses the reference to the objection by the Spokane Tribe, which said, "The Tribe believes its own gambling operations will be detrimentally impacted." He said that's not telling the whole story. The Spokane Tribe acknowledged that, as long as they are operating slot machines, the Kalispel Tribe's operation, which will only go forward under the legal compact process in this state, they will not be negatively impacted. What they then posed was a pretend situation in which they both had illegal machines or both don't, which is when they say an impact would occur. He said it should be recognized that the two operations, as they would stand, would not be on the same economic ground. The Spokane Tribe's operation has an enormous competitive advantage, which they acknowledge.

Mr. Ralston said, regarding section 4, to clarify that the Spokane believes that its operation would be impacted if it did not have the competitive advantage of unauthorized games. At the end of that on page 4, they have inserted language there with the concern that by simply having the Spokane Tribe say to a reporter that they would go into downtown Spokane to buy land is like raising a "boogey" man, because they're not going downtown anywhere for casino gaming unless they go through the prescribed legal process. The Kalispel Tribe is trying to follow the prescribed legal process and anyone else would also have to do that. He said some of the fear element should be taken out of what the Spokane Tribe has said and put it into the context of section 27-19 where it belongs.

Chairman Heavey said he would much rather have a statement that says "the Spokane Tribe..." and at the end of that paragraph, put down that the Spokane Tribe operates an illegal casino. **Commissioner McLaughlin** suggested saying they have "illegal gaming devices in their casinos." **Mr. McCoy** said both of those statements are correct. **Chairman Heavey** said he'd rather put that in so the context is there.

Mr. McCoy said that the fact that any tribe has expressed an intent, however the intent was expressed, is relevant to the discussion.

Mr. Ralston said this is going to be sent to the Governor and the statement is scary. The law is there and the Spokane Tribe is never going to be in downtown Spokane. **Mr. McCoy** stated that can't be said. **Mr. Ralston** said that is his perception of political reality, but it's only fair to point out that anything the Spokane Tribe does is going to have to follow the legal process. That tribe has avoided the legal process in the past. **Mr. McCoy** said he won't dispute that, but the point he'd like to make is that it doesn't put the Spokanes in any different position from where the Kalispel Tribe is right now. It's exactly the same process. **Mr. Ralston** said there's no reason to point it out to the Governor and flag it like that.

Commissioner McLaughlin said the finding states it the way the Spokane Tribe stated it. A statement shouldn't be changed or re-worded. She has no problem with adding a sentence at the end stating that the Spokane Tribe is operating casinos without compacts. **Chairman Heavey** said they are operating casinos without compacts and with slot machine. He asked the commissioners if they had any problem with adding that sentence; **Commissioner Ludwig** said he had no problem with adding that sentence.

Mr. Fleisher said he spoke about section 2 yesterday and the commissioners now have a memo, dated today and with his signature, before them making arguments and addressing his concerns about this section. He said the problem they have is that the question before the Governor that this Commission is supposed to be giving information and advice on is whether this is detrimental to the surrounding community. This raises a separate public policy question that is not really appropriate in the context of the request. He makes four specific arguments in his memo.

Chairman Heavey asked if anyone has a problem with taking this out and then addressing it in the appropriate forum and at the proper time. **Commissioner Ludwig** said he has no problem with taking it out; it's not within scope of the findings they were asked to provide. **Commissioner McLaughlin** agreed.

Chairman Heavey asked if there were any other comments with regard to the Commission's findings.

Ms. Alvarez said that a couple of the statements made in the findings were not actually findings of fact. Some were bordering on conclusions of law; some were not directly related to whether this has a detrimental impact to the community, which was the overall scope that the Tribe was looking at in reviewing the report. The Governor is going to look at this very closely and take the Commission's findings of fact and recommendation seriously. The Tribe's whole point all along is

that these are clearly not findings of fact. Even the statement to the Spokane press about the Spokane Tribe's intent build in Spokane was not provided in public testimony at the two public hearings, nor was it in writing and presented to the Commission. Despite the Tribe's best efforts to proceed conservatively and cautiously and within the law, they have been met with fear and suspicion among some members of the Spokane community, rather than an objective review of the facts. They want to be on an even playing field with regard to the facts. The Tribe's purpose is solely to improve the conditions for tribal members. Tribe is entitled to be treated even-handedly as all the previous tribes have been treated by the Commission, and also as nonprofit and charitable organizations have been treated by the Commission.

Ms. Alvarez said her next point is regarding the argument that to approve the Kalispel proposal would encourage other tribes to purchase fee land for the purpose of gaming. **Chairman Heavey** said that point is not made in these findings; **Ms. Alvarez** acknowledged that, although it was omitted from the document, it may come up later. She feels this argument is an outgrowth of a fear and suspicion of something that might happen rather than facts. She believes that any tribe that would propose to do this would have to pass a very high and strict standard as set by the Kalispel Tribe. The Kalispel Tribe has set a high standard for any future proposal to meet. The Kalispel Tribe has no tribal enterprises and has a remotely located reservation that is not feasible to build upon. The Tribe has been historically impoverished. The Tribe has followed all the laws and regulations and will continue to comply with all the regulations as necessary. The Tribe has also shown to be a very good neighbor. Its testimony at the public hearing made it clear that the Tribe intended to make efforts to do whatever they could to satisfy all interests involved.

Ms. Alvarez said her last point is that the report, overall, was devoid of any positive facts and testimony that were presented at either of the two long public hearings that were held. She said great weight should be placed on the quality of the factual aspects of the comments that were made and the comments presented in writing on behalf of the Kalispel proposal rather than commenting on the quantity of those who were against the proposal. She found the last paragraph to be devoid of any of the positive comments made at the public hearing and there were a number of very positive comments made by people who did not have an ax to grind but were very clear that this is a good thing for the community as a whole. She would like to see those positive comments added. She thanked the Commission the time it took in gathering comments, reviewing a lot of documents and for working hard on this issue. She said the Tribe urges the Commission to go forward with its findings to Governor Locke with a favorable recommendation for the Kalispel Tribe.

Chairman Heavey asked if anyone else wanted to make any comments. No one came forward.

Commissioner McLaughlin said she questioned the last finding herself because there were City remarks that were very favorable to the Tribe locating a casino and education center there and she doesn't see anything wrong with including a statement to that affect.

Director Miller said the intent of the last paragraph, from a drafting standpoint, was to capsulize the majority of the views at the hearing. In reviewing the entire file again, the majority of the people were clearly opposed to this project. **Commissioner McLaughlin** said she agrees with that, but there isn't anything wrong with adding that there were some positive statements made but the majority of the statements were in opposition. **Ms. Tellefson** said the staff can certainly do that. She said the notebooks would also be forwarded to the Governor and they are divided into letters of opposition and letters of support and are marked clearly with tabs where all the comments are found. Minutes from the hearings will also be included. **Commissioner McLaughlin** said she would like to see the positive comments from the local jurisdictions and from the Tribe added to the findings.

Chairman Heavey asked if anyone else had comments regarding the Kalispel proposal; no one came forward.

PETITION FOR DECLARATORY ORDER

Recreational Gaming Association, Washington State Licensed Beverage Association, and the Washington State Bowling Proprietors Association

Robert M. Tull, attorney located in Bellingham for the petitioners in this matter, said he has handed out to the head table a copy of administrative code provisions of the Commission and a diagram that Mr. Saucier prepared. Over a period of months, these issues have been evolving. He has reviewed the minutes from the last meeting to see the tenor and direction of the discussions at last month's meeting. He had prepared a letter addressed to Director Miller at that meeting, which was distributed to the Commission and staff only at that meeting and stating that he does not think the petition has to be resolved or adjudicated by this Commission at this time. It was and is his view after further consideration that the director can, under the rules that are already in place, consider, if he receives an application from a card room licensee, a test of a game. He can do so within the context of player supported jackpots or PSJ. The rule he handed out, 230-40-010, which sets up the types of card games allowed, includes the language adopted in 1976 or that allows the director to take a look at variations of games. That was clearly intended to eliminate the confusion of rule making taking place in advance of information gathering. If supported by staff after information is gathered, then the rule change can proceed. At the same time, there are different card rooms that are presently participating in a test in connection with the player supported jackpot scheme approved by the Legislature last year. There are some differences.

In looking at the "balloon" chart that Mr. Saucier prepared, card games are divided here into two types; pot games and banked games. They distinguish between player banking, which has been taking place in Washington state in many forms for a long time, and house banked games, which, for card room purposes today, is in the Legislature and will not be addressed today. House banking would be where the house is playing against the players and the winner takes the pot, which is very commonplace in all sorts of gambling activities and it may have advantages. It may also have disadvantages in marketing in certain types of card room situations. In his discussions with the industry representatives over the last couple of months, they don't see it as house banking or player banking, but see a little more complex future environment wherein both can exist. It remains to be seen whether they can both exist in the same facility. It is possible that some operators would rather promote the cooperative nature of the banking system in order to attract and sustain business, but others would prefer to take the house banking. They are not here today to resolve house banking. Player banking is something that can be done in a number of ways. The PSJ can apply both to pot games and to bank games and is separate. At times, the distinction can be very subtle and a person could design a PSJ game that looks like a player banked game, which is the kind of information this Commission, through its staff, may want to look at before making final rules some months in the future.

Mr. Tull said the recommendation he has made to the organizations is that they appear today not to demand an answer from the Commission, but rather let the Commission give a sense of direction to Director Miller as to whether he should devote some staff resources to the entertainment of particular game proposals; not generalities or concepts, but particular operations that can then be observed and the merits ascertained. What he sees in the minutes from last month's meeting was two very plain things. One, Director Miller said he did not want to go forward in that fashion without some direction from the Commission, and the Commission indicating they weren't prepared, with the brief amount of time available, to go in that direction.

Mr. Tull said his proposition to the Commission today is that this issue can be resolved if the Commission is comfortable in letting Director Miller take the direction in which he could go in a test type of period. If that was comfortable with the Commission, then the groups would withdraw the petition and there would be no formal adjudication. As this goes forward in a test mode, then

whatever the issues are will become evident and can be resolved. He assumes the question then becomes as to whether or not it is within the jurisdiction of the Commission and its director to entertain a variation of a player banked game. One in which it might involve the house having custody of those funds under appropriate security with appropriate rules, audits and regulations, over a period of a day, week, month or several months, how that money is handled and redistributed. Similar issues are being successfully addressed in the PSJ test currently going on.

Mr. Tull said, regarding potential legal issues, Director Miller already has the authority that was given to him in section WAC 230-40-010 to test new games. In reading Mr. McCoy's letter, he said he and Mr. McCoy actually agree in each of their letters on some points. In looking at Mr. McCoy's letter, on page two, his conclusion states that a player should be defined, given the meaning of the section of the statute Mr. Tull has asserted does not apply, Mr. McCoy states that, "While the Commission has great latitude in determining what games are authorized, the game itself must conform with the general rules set forth in paragraphs 1 and 2: that there are two or more participants, each of which are players; and that a player's success at winning is, in the long run, largely determined by the skill of the player..." He said he agrees generally with that conclusion and he believes that player banked proposals can be described and submitted for review and tested that would satisfy those crucial components. It would mean, for example, that it would probably be a requirement that the card room have two patrons in attendance rather than one. There couldn't be just a card room supplied dealer dealing to just one person, which would ensure that there are a couple of participants. Then question of the predominance of skill over the long run can be addressed. If it's decided that skill doesn't have to be a factor, then this can be done on the player banked side by having a rule that establishes the requirement that skill be the basis for giving the money back to players.

Mr. Tull gave the example of a coop such as Recreational Equipment Incorporated (REI) in Seattle has customers who shop there because they get back 10 percent of what they spend, except on sale items and other exceptions. REI is a very successful merchandiser. A card room that wants to merchandise on the basis of sharing the bank winnings. Each night, the bank would be given back based on who had the best performance of the evening, or this could be done for the week. It would have to be approved by the WSGC staff in advance, but it could be tried out. It would begin to look a lot like the card room tournaments that have been run in card rooms under Commission sanction for many, many years.

Mr. Tull said, regarding Mr. McCoy's conclusion that the house can't be a player is not the determinative issue in this case. The house isn't going to play against the players. The Commission can define what it means to be the operator of a player bank. Currently, on an experimental basis, the Commission has authorized the director to make those types of determinations for testing purposes. In summary, he said their proposal is that the commissioners, in a very informal way, let Director Miller know that it's okay to receive suggestions as to how to do a player banked game. It would probably be separate from the progressive jackpot arrangement.

Commissioner McLaughlin said there are already player banked games now. **Mr. Tull** said yes, and this would be additional variations. That's why he thinks this is completely within the normal course of events. Because the question was asked differently in the beginning, Mr. McCoy has been answering some different questions. The petitioners have changed their request partly in response to Mr. McCoy's advice. He asked if there were any questions and said there are industry representatives available also to respond to questions.

Chairman Heavey asked what they were asking for, because what he understood they wanted was to prevent somebody coming in and providing funds from a player and that player as the bank, because people don't like being the bank, would give the money to the person who financed him. That's what he thought they wanted to avoid. **Mr. Tull** said he's sure the industry would like to have the players operate as players and the operators be responsible. And if

there's going to be player money, either through jackpots or through a player bank sustained inside the building for a period of time, that it be closely controlled and that it not go out with somebody to a motorcycle in the parking lot. If a bad guy wants to play cards all night, he can and he can win. What they don't want is a situation where someone becomes a "defacto" banker. Currently that exists from time to time but probably isn't causing a consistent level of problem, but there's the potential for that. By providing to the licensed community a mechanism that can take the strain off players who don't want to be bankers by making them all for certain tables or certain occasions invest jointly as bankers under the licensees' custodial responsibility, and then, over time if the bank is winning, then that winning can be distributed back. Mr. McCoy's suggestion that it should be related to skill can be addressed. He thinks the confusion comes from the original question posed by the petition that originally said to take player supported jackpots and combine them to do player banking. He said they are asking, at this point, that the licensees ought to make proposals to the Director for his examination and test in the field, and then come back to see if those will lead to rules that will prevent the individual bank potential problem that have been made apparent to everyone. He asks that the Director receive a better sense of direction as to the Commission's willingness to explore solutions.

Mr. Tull said the interpretive issue can come down to one simple thing: does this Commission look for opportunities to solve problems, or does it insist that the Legislature provide it with extremely detailed mandates in every instance. He said that is a traditional issue faced by rule making bodies and administrative agencies. This statute empowers this Commission with a very clear mandate to be liberal in the construction of its powers to address the issues. That's why there is a rule providing for tests as part of a later rule making process.

Chairman Heavey said his understanding is that what was originally proposed was that the house put up the money for the bank. **Director Miller** clarified that what was originally proposed was that the house may provide the initial seed money and then once the losses have taken over, then the players' losses become the bank and the house can never take a percentage of that money but instead charges a separate fee to play cards. What he hears the petitioner asking for now is to develop a system where the players pay into the bank and the house is the custodian of the bank. At a given point in time, the residual of that bank is given back to the players depending upon how well they've done over time, like a tournament situation, or may be given to another source, but in no way can the house ever have any of that money.

Chairman Heavey asked if it is allowed under the present statute for the house to lend money to players. **Director Miller** said no, that is not presently allowed. He asked how the initial startup scenario would be handled.

Mr. Tull said one scenario discussed briefly is that the table that would play under this would require that players show up and fund the startup bank. **Chairman Heavey** said that would address the technicality in the statute that says they have to be players. **Director Miller** added that, in theory, by testing this new type of game on certain tables and asking players who want to participate to contribute so much of their own money, not the house. He said he's not sure that would fly unless they'd get their money back. Players can loan money to other players, but the house can't loan to players.

Chairman Heavey said he doesn't have a problem with constructing the game set up with a funded bank if at the end of it they get their money back and the rest of it is distributed. The Legislature defines what the Commission can do, but if they can't do it, then they can't do it. **Mr. Tull** said the buy in procedure is something that is actually in the Commission's purview. He said there is currently a rule that prohibits lending of money, and that would have to be dealt with. If, at some point in the future, there were a system that made sense and allowed the house to seed it, that would be a rule making to go through. If there is a rule currently that says there can be no lending of credit, then that can be very strictly construed and there are ways that can be proposed to the Director as to how to do the startup and see how it works. They think this is a

situation in which the moves can be made in small steps.

Mr. McCoy said that when he was asked to address the issue initially, he was asked to address a particular petition, and that petition has evolved from that. He said the fundamental points that apply are that the basic rule for player still applies to card games and that there be a separation between the player supported prize funds or jackpot schemes and the card game itself. By their nature, banked card games do not fit the definition. Generally, they don't. Back in 1989 when Washington Blackjack was first proposed, the way it was addressed was by requiring the game to be conducted in a certain manner so that the advantage the house has was distributed amongst the players. That principle sounds similar to the one Mr. Tull is currently proposing. He said the two principles still apply: 1) that there still be players as defined in the statute, and 2) that there be a distinction between a player supported jackpot and a card game. **Mr. Tull** said he believes it is available by rule now under the direction of the director. He can distinguish between a PSJ arrangement and just another variation of a player banked game, and going from the current system of, at times, an awkward rotation of banking over to one that doesn't just get around the technicality, it's addressing the issues and making sure that the regulatory concerns are dealt with.

Director Miller said it would appear that they are asking for is the ability to have a game whereby the money, at the end of a period of time, given on some tracking system based on performance, the residual amount above and beyond the jackpot is distributed equally, so the money goes back to the players. The bank has no advantage, because the player who does the best will get the residual share. **Mr. McCoy** said this would create a pooled bank. **Mr. Tull** said it could be described as a different kind of pot.

Chairman Heavey said these are technicalities. He does not have any problems with what it sounds like Mr. Tull is proposing, as long as the requirements are met as defined by Assistant Attorney General Jon McCoy. As long as the house doesn't come up with the money and it's from the players in certain ways. He said, if the other commissioners agree, then the staff should work out the details and see if that can be done. He has no problem with setting up a test program to see how it works, as long as the requirement is met that the bank has to be by a player or a combination of players.

Commissioner Ludwig asked if what Mr. Tull is asking for is that the Commission give some authorization and direction approving the concept and let Director Miller work out the details of how that pooled bank will work. He said he's not concerned with the licensee prohibition against lending of money or credit, because he doesn't see starting up the fund as loaning any individual or identifiable group of individuals money. **Chairman Heavey** said that's the slippery slope; once the house is authorized to do this with players -- advance money, give credit -- then the next step is, "why can't we do this?" And pretty soon, the Commission has gone way beyond what the Legislature has authorized it to do. **Commissioner Ludwig** said going this one step doesn't seem like anyone is loaning any particular person or identifiable group money. **Chairman Heavey** said if there's a way for the house to get a group of people together to kick in some money, they have to be part of the game.

Director Miller said this would give the Commission staff a chance to be candid and do away with the problem they saw at the Mars Hotel. Until there is a solution to the problem up at the Legislature, it would allow the staff to make a little better environment in the card rooms. As long as the house doesn't benefit, and the funds are distributed properly, it could work. He said he thought about giving the residual money to the Council on Problem Gambling, but he hadn't thought about giving the money back to players, which will require a challenge to track.

Commissioner McLaughlin said the state, in its Lottery, advance money to a winner; **Chairman Heavey** said, although that may be, that is under a different statute. **Director Miller** said there is a specific rule that prohibits credit. **Mr. McCoy** said those rules were developed around the

principle that nobody other than players participated in the game. Originally, there were two reasons why jackpots were prohibited. One was because they are, by their nature, a lottery. The other is because the house is participating in the game. **Director Miller** said that was changed last year.

Commissioner McLaughlin said she thinks this should be put into a test and tried out.

Commissioner Ludwig said while he said he has no problem with authorizing the concept and then leaving the details to Director Miller and the licensees doing the testing, he still is curious as to any variations of the startup. He said Mr. Saucier told him that the California system permits the seed money and then the house takes it back then it is, hopefully, self supporting. He asked what any other methods are. **Chairman Heavey** said that is lending players money, which the house is prohibited from doing.

Mr. Tull said Mr. Saucier will address that question. During this initial period, if this is approved, it would be up to Director Miller if a particular suggestion for startup was appropriate. Because of the test nature of this, the director could consider a variety of ways to seed. He said it would be within the Commission's power to ultimately decide on a seeding arrangement. It may or may not be appropriate to test it going in. As Mr. McCoy pointed out, some of those rules came out of a different gambling era and they may need adjustment.

Mr. Saucier, representing the petitioners, said there are three different ways to approach this; the first, which would follow what is currently done with jackpots, is where the house seeds the jackpot and gets that money back but not any more than that.

Chairman Heavey asked if that is specifically authorized by statute; **Director Miller** said it is authorized in the test, because there wouldn't be any jackpot to play for initially. The house makes no money on it; they are giving money away. It's like giving a prize away. They can add more prizes to a pull tab if they so choose, and it's like that. They are not getting anything more back from it. **Mr. Saucier** said that, in tournaments, they donate money to the tournament fund and never receive it back as an incentive for people to play. If there's a concern about the lending of credit, the operator could start the bank with their own money and never pull it back out. They don't do that presently with the jackpots, but if there is a concern about the difference between the jackpots and this, then that would be a good alternative. The next best alternative would be that the operator puts up the money to get the bank started, not pull the money back and leave it as a contribution. That solves the money lending issue.

Chairman Heavey said his feeling is that, as long as the statutory requirements are met that they be a player and the house can't lend any money, then he doesn't have a problem with how it's decided. It has to meet those two requirements. The discussion today is the details of that, and the Commission is not in the position to determine the details. **Mr. Tull** referred to what Director Miller said about what happened when this program was evolving and potential problems arose, and that's why he would now want direction from the Commission to be sure it's in line with the intention of the Commission. He said that if the Commission is now telling Director Miller that he can move forward with this, then the petitioners will withdraw their petitions.

Chairman Heavey asked if the Commission members concur that, as long as it's a player and the house isn't lending money, then the Director and staff can work out any kind of scheme.

Commissioner Ludwig and **Commissioner McLaughlin** concurred.

Commissioner Ludwig asked for clarification. He said if this works out and something is put into the rule allowing this, that won't eliminate a card room owner/operator from continuing to do what they are presently doing with Washington Blackjack. **Director Miller** said that is correct. **Mr. Tull** said the licensee community would like as many merchandising choices as they can have. The regulatory side is to make sure that every opportunity has been thoroughly tested and

is not going give rise to unanticipated problems. He said when Director Miller is comfortable and says that on the record, the petition will be withdrawn.

Director Miller said he's not going to say he's comfortable, but he certainly has direction. The price of the test fee will have to go up if this is going to be done. He said in order to do this absolutely correctly, the fees will have to be raised. **Chairman Heavey** said that is fine with him.

Mr. Tull said the group has agreed to withdraw this petition, because this direction is more constructive and appropriate. He thanked the Commission for its patience over the last couple of months and today. They will come back with rules at the appropriate time.

Chairman Heavey thanked Mr. Tull for his presentation. He asked if anyone else would like to make any comments; no one had comments.

LEGISLATIVE SESSION

Nonprofit Industry Bills

Greg Murray, WCCGA, noted that the Commission and the Commission staff have been very supportive of the nonprofit industry and have been very helpful in providing more ways to increase net revenues and help the citizens of this state. He asked that the Commission support two legislative bills. The first is the pull tab tax bill, which would revise the tax structure to a tax based on gross less prizes. It would also, for most of the nonprofit organizations, reduce their tax burden substantially and allow them to use more of the funds they receive from pull tabs for nonprofit services. The other bill that would increase the nonprofit organizations' ability to serve Washington state citizens is the satellite bingo bill. In the province of Alberta, it has been very successful in boosting the nonprofit organizations' ability to raise funds. He said it would work substantially well here to support mid-size and smaller games. Even though the Commission has not always taken positions on bills in the past, but he asked that the Commission take a position to support these two bills as they move forward in the Legislature.

Director Miller said he testified yesterday on the satellite bingo bill that, from a regulatory standpoint, Commission staff have seen no potential problems with this bill. Deputy Director Bishop has looked into this issue already to assess potential impacts in the event it should pass, but he did not endorse the bill. On the tax bill, he spoke on his own and not on behalf of the Commissioners that it is his opinion the tax issue should be looked at closely since it has been 20-some years since the statute and tax rules were first drafted.

Chairman Heavey said he would support testimony to the Legislature stating that the nonprofit groups provide a very valuable service to the community and that the Legislature should consider ways to increase their revenue so they can continue to provide services in the face of present competition. He said there are some very valuable services out there that ought to be funded with tax money that are not.

Commissioner McLaughlin moved to adopt the Chairman's resolution; **Commissioner Ludwig** seconded the resolution. **Chairman Heavey** asked if there was any further discussion; no one had comments. *Vote taken, motion carried with three aye votes.*

Chairman Heavey called for an executive session and adjourned the meeting.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green

Executive Assistant